

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 315

Introduced by Brashear, 4

Read first time January 14, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to notaries public; to amend sections 33-133,
2 64-101, 64-102, 64-113, and 64-210, Reissue Revised
3 Statutes of Nebraska; to provide for and change
4 provisions relating to appointments, examinations,
5 notarial acts, and removal; to define terms; to provide
6 powers and duties; to provide penalties; to harmonize
7 provisions; to provide a duty for the Revisor of
8 Statutes; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 33-133, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 33-133. Except as otherwise provided in this section,
4 notaries public may charge and collect fees as follows: For each
5 protest, one dollar; for recording the same, two dollars; for each
6 notice of protest, two dollars; for taking affidavits and seal, two
7 dollars; for administering oath or affirmation, two dollars; ~~for~~
8 ~~taking deposition, for each one hundred words contained in such~~
9 ~~deposition and in the certificate, one dollar and no more,~~ for each
10 certificate and seal, five dollars; for taking acknowledgment of
11 deed or other instrument, five dollars; and for each mile traveled
12 in serving notice, mileage at the rate provided in section 81-1176.
13 An employee of the state or its political subdivisions may not
14 charge the fees prescribed in this section if his or her
15 governmental employer paid the commission and bonding fees required
16 of notaries public.

17 Sec. 2. Section 64-101, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 64-101. (1) The Governor ~~is hereby authorized to~~ may
20 appoint and commission such number of persons to the office of
21 notary public as he ~~shall deem~~ or she deems necessary.

22 (2) There shall be one class of such appointments which
23 shall be valid in the entire state and referred to as general
24 notaries public.

25 (3) The term effective date, as used with reference to a
26 commission of a notary public, shall mean the date of the
27 commission unless the commission ~~shall state~~ states when it goes
28 into effect, in which event that date shall be the effective date.

1 (4) A general commission may refer to the office as
2 notary public and shall contain a provision showing that the person
3 therein named is authorized to act as a notary public anywhere
4 within the State of Nebraska or, in lieu thereof, may contain the
5 word general or refer to the office as general notary public.

6 (5) No person shall be appointed a notary public unless
7 ~~his or her application is accompanied by the petition of at least~~
8 ~~twenty-five legal voters of the county in which he or she resides.~~
9 he or she has taken and passed a written examination on the duties
10 and obligations of a notary public as provided in section 3 of this
11 act.

12 (6) No appointment shall be made if such applicant has
13 been convicted of a felony or other crime involving fraud or
14 dishonesty.

15 (7) No appointment shall be made until such applicant
16 ~~shall have~~ has attained the age of nineteen years nor unless such
17 applicant ~~shall certify~~ certifies to the Governor under oath that
18 he or she has carefully read and understands the laws relating to
19 the duties of notaries public and will, if commissioned, faithfully
20 discharge the duties pertaining to ~~said~~ the office and keep records
21 according to law.

22 ~~(7)~~ (8) Each person appointed a notary public shall hold
23 office for a term of four years from the effective date of his or
24 her commission unless sooner removed.

25 Sec. 3. The written examination required by section
26 64-101 shall be developed and administered by the Secretary of
27 State and shall consist of questions relating to laws, procedures,
28 and ethics for notaries public. All applicants for commission as a

1 notary public on and after the effective date of this act shall be
2 required to take and pass the examination prior to being
3 commissioned.

4 Sec. 4. Section 64-102, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 64-102. Any person may apply for a commission
7 authorizing the applicant to act as a notary public anywhere in the
8 State of Nebraska, and thereupon the Governor may, at his or her
9 discretion, issue a commission authorizing such notary public to
10 act as such anywhere in the State of Nebraska. A general
11 commission shall not authorize the holder thereof to act as a
12 notary public anywhere in the State of Nebraska until a bond in the
13 sum of ~~ten~~ twenty-five thousand dollars, with an incorporated
14 surety company as surety, has been executed and approved by and
15 filed in the office of the Secretary of State. Upon the filing of
16 such bond with the Secretary of State and the issuance of such
17 commission, such notary public shall be authorized and empowered to
18 perform any and all the duties of a notary public in any and all
19 the counties in the State of Nebraska. Such bond shall be
20 conditioned for the faithful performance of the duties of such
21 office. Such person so appointed to the office of notary public
22 shall make oath or affirmation, to be endorsed on such bond, and
23 subscribed by him or her before some officer authorized by law to
24 administer oaths, and by him or her certified thereon, that he or
25 she will support the Constitution of the United States and the
26 Constitution of the State of Nebraska, and will faithfully and
27 impartially discharge and perform the duties of the office of
28 notary public.

1 Sec. 5. (1) A notary public shall not perform any
2 notarial act as authorized by Chapter 64, articles 1 and 2, if the
3 principal:

4 (a) Is not in the presence of the notary public at the
5 time of the notarial act; or

6 (b) Is not personally known to the notary public or
7 identified by the notary public through satisfactory evidence.

8 (2) For purposes of this section:

9 (a) Identified by the notary public through satisfactory
10 evidence means identification of an individual based on:

11 (i) At least one document issued by a government agency
12 that is current and that bears the photographic image of the
13 individual's face and signature and a physical description of the
14 individual, except that a properly stamped passport without a
15 physical description is satisfactory evidence; or

16 (ii) The oath or affirmation of one credible witness
17 unaffected by the document or transaction to be notarized who is
18 personally known to the notary public and who personally knows the
19 individual, or the oaths or affirmations of two credible witnesses
20 unaffected by the document or transaction to be notarized who each
21 personally knows the individual and shows to the notary public
22 documentary identification as described in subdivision (a)(i) of
23 this subsection; and

24 (b) Personal knowledge of identity or personally known
25 means familiarity with an individual resulting from interactions
26 with that individual over a period of time sufficient to dispel any
27 reasonable uncertainty that the individual has the identity
28 claimed.

1 Sec. 6. A notary public is disqualified from performing
2 a notarial act as authorized by Chapter 64, articles 1 and 2, if
3 the notary:

4 (1) Will receive as a direct or indirect result any
5 commission, fee, advantage, right, title, interest, cash, property,
6 or other consideration exceeding in value the fees specified in
7 section 33-133, except that licensed real estate agents and brokers
8 and employees of licensed and regulated professional organizations,
9 sole proprietorships, or other business organizations, including,
10 but not limited to, attorneys, financial institutions, and
11 accounting firms, shall be exempt from this subdivision; or

12 (2) Is a spouse, ancestor, descendant, or sibling of the
13 principal, including in-law, step, or half relatives.

14 Sec. 7. (1) A notary public may certify the affixation
15 of a signature by mark on a document presented for notarization if:

16 (a) The mark is affixed in the presence of the notary
17 public and of two witnesses unaffected by the document;

18 (b) Both witnesses sign their own names beside the mark;

19 (c) The notary public writes below the mark: "Mark
20 affixed by (name of signer by mark) in presence of (names and
21 addresses of witnesses) and undersigned notary public"; and

22 (d) The notary public notarizes the signature by mark
23 through an acknowledgment, jurat, or signature witnessing.

24 (2) A notary public may sign the name of a person
25 physically unable to sign or make a mark on a document presented
26 for notarization if:

27 (a) The person directs the notary public to do so in the
28 presence of two witnesses unaffected by the document;

1 (b) The notary public signs the person's name in the
2 presence of the person and the witnesses;

3 (c) Both witnesses sign their own names beside the
4 signature;

5 (d) The notary public writes below the signature:
6 "Signature affixed by notary public in the presence of (names and
7 addresses of person and two witnesses)"; and

8 (e) The notary public notarizes the signature through an
9 acknowledgment, jurat, or signature witnessing.

10 Sec. 8. (1) A notary public who is not an attorney shall
11 not engage in the unauthorized practice of law as provided in this
12 section.

13 (2) If notarial certificate wording is not provided or
14 indicated for a document, a notary public who is not an attorney
15 shall not determine the type of notarial act or certificate to be
16 used.

17 (3) A notary public who is not an attorney shall not
18 assist another person in drafting, completing, selecting, or
19 understanding a document or transaction requiring a notarial act.

20 (4) A notary public who is not an attorney shall not
21 claim to have powers, qualifications, rights, or privileges that
22 the office of notary public does not provide, including the power
23 to counsel on immigration matters.

24 (5) A notary public who is not an attorney and who
25 advertises notarial services in a language other than English shall
26 include in any advertisement, notice, letterhead, or sign a
27 statement prominently displayed in the same language as follows:
28 "I am not an attorney and have no authority to give advice on

1 immigration or other legal matters".

2 (6) A notary public who is not an attorney may not use
3 the term notario publico or any equivalent non-English term in any
4 business card, advertisement, notice, or sign.

5 (7) This section does not preclude a notary public who is
6 duly qualified, trained, or experienced in a particular industry or
7 professional field from selecting, drafting, completing, or
8 advising on a document or certificate related to a matter within
9 that industry or field.

10 (8) A violation of any of the provisions of this section
11 shall be considered the unauthorized practice of law and subject to
12 the penalties provided in section 7-101.

13 Sec. 9. A notary public shall notify the Secretary of
14 State of any change of his or her residence no later than
15 forty-five days after such change. Information provided on the
16 change-of-address form shall include the notary public's name as it
17 appears on his or her commission, the date the commission expires,
18 and the notary public's new address. The Secretary of State shall
19 prescribe forms consistent with the requirements of this section.

20 Sec. 10. Section 64-113, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 64-113. (1) Whenever charges of malfeasance in office
23 ~~shall be~~ are preferred to the Governor against any notary public in
24 this state, or whenever the Governor ~~shall have~~ has reasonable
25 cause to believe any notary public in this state is guilty of acts
26 of malfeasance in office, ~~he~~ the Governor may appoint any
27 disinterested person, not related by consanguinity to either the
28 notary public or person preferring the charges, and authorized by

1 law to take testimony of witnesses by deposition, to notify such
2 notary public to appear before him or her on a day and at an hour
3 certain, after at least ten days from the day of service of such
4 notice. ~~He~~ Such appointee may summon witnesses, in the manner
5 provided by section 64-108, to appear ~~before him~~ at the time
6 specified in ~~said~~ the notice, and he or she may take the testimony
7 of such witnesses in writing, in the same manner as is by law
8 provided for taking depositions, and certify the same to the
9 Governor. The notary public may appear, at such time and place,
10 and cross-examine witnesses, and produce witnesses in his or her
11 behalf, which cross-examination and testimony shall be likewise
12 certified to the Governor. Upon the receipt of such examination,
13 duly certified in the manner prescribed for taking depositions to
14 be used in suits in the district courts of this state, the Governor
15 shall examine the same, and if therefrom he or she is ~~shall be~~
16 satisfied that the charges are substantially proved, he or she may
17 remove the person charged from the office of notary public or
18 temporarily revoke such person's commission. Within ~~thirty~~ fifteen
19 days from after such removal or revocation and notice thereof, such
20 notary public shall deposit, with the Secretary of State, ~~his~~ the
21 commission as notary public and notarial seal. The commission
22 shall be canceled or temporarily revoked by the Secretary of State.
23 ~~Thereafter such~~ A person so removed from office shall be forever
24 disqualified from holding the office of notary public. A person
25 whose commission is temporarily revoked shall be returned his or
26 her commission and seal upon completion of the revocation period
27 and passing the examination described in section 3 of this act.
28 The fees for taking such testimony shall be paid by the state at

1 the same rate as fees for taking depositions by notaries public.
2 The failure of the notary public to deposit his or her commission
3 and seal with the Secretary of State as required by this section
4 shall subject him or her to a penalty of ~~two hundred~~ one thousand
5 dollars, to be recovered in the name of the state.

6 (2) For purposes of this section, malfeasance in office
7 means, while serving as a notary public, (a) failure to follow the
8 requirements and procedures for notarial acts provided for in
9 Chapter 64, articles 1 and 2, or (b) being convicted of a felony or
10 other crime involving fraud or dishonesty.

11 Sec. 11. Section 64-210, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 64-210. (1) Each notary public, before performing any
14 duties of his or her office, shall provide himself or herself with
15 an official seal on which shall appear the words State of Nebraska,
16 General Notary or State of Nebraska, General Notarial, and his or
17 her name, and in addition, at his or her option, the date of
18 expiration of his or her commission. A + PROVIDED, a notary public
19 may use the initial letters of his or her first name and middle
20 name. A notary public shall authenticate all his or her official
21 acts with such seal. Under his or her official signature, on all
22 certificates of authentication made by him or her, ~~he~~ a notary
23 public shall write, stamp, or otherwise show the date when his or
24 her term of office as such notary public will expire if such date
25 of expiration is not engraved on the seal.

26 (2) The official seal of a notary public shall be ~~may be~~
27 ~~either an engraved or~~ ink stamp seal with which he or she shall
28 authenticate all of his or her official acts. + PROVIDED, ~~that~~

1 every notary who receives a commission, either new or renewal, on
2 or after January 1, 1972, shall use an ink stamp seal to
3 authenticate any instrument.

4 Sec. 12. The Revisor of Statutes shall assign sections 3
5 and 5 to 9 of this act to Chapter 64, article 1.

6 Sec. 13. Original sections 33-133, 64-101, 64-102,
7 64-113, and 64-210, Reissue Revised Statutes of Nebraska, are
8 repealed.